

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1877 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

USHABEN D/O SARDARILAL

KARAMCHAND SHARMA

Versus

COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL for Petitioner

MR UR BHATT AGP for Respondents

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 22/07/96

ORAL JUDGEMENT

Ushaben daughter of Sardarilal Karamchand Sharma, in this petitioner under Article 226 of the Constitution of India, has challenged the legality and validity of the order of her detention dated 14.2.1996 passed under section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as the 'PASA Act') by the Police Commissioner, Ahmedabad City (hereinafter referred to the 'detaining authority').

The detaining authority in the grounds of detention supplied to the detenu on the even date has placed reliance on 9 prohibition cases registered against the detenu, 6 out of which are pending trial, while 3 are at the investigation stage. Over and above this material, a further reliance has been placed on the statements of 4 witnesses, who in their statements has alleged about the anti social and nefarious activities of the detenu of the incidents dated 16.1.1996 and 24.1.1996. Considering this material, the detaining authority came to the conclusion that the detenu is a bootlegger within the meaning of section 2(b) of the PASA Act and with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order it was necessary to pass the order of detention against the detenu and, therefore, the impugned order is passed, which is under challenge in the present petition.

Since this petition is required to be allowed on the first contention advanced on behalf of detenu by Mr. Patel learned advocate appearing for the petitioner, it is not necessary to deal with other contentions. Mr. Patel submitted that the mother of the detenu has made a representation to the detaining authority on 26.2.1996 and even though the same was received by the office of the Chief Minister on 27.2.1996. Till the date, the representation is not considered, with the result that the right guaranteed under Article 22(5) of the Constitution of India is violated and, therefore, the petition is required to be allowed on this ground alone.

I find substance in the submission of Mr. Patel. The mother of the detenu has made a representation to the Chief Minister on 26.2.1996. As can be seen from the registered AD receipt and the letter dated 12.7.1996 of the Deputy Manager, Department of Posts, Customer Care Centre, produced by Mr. Patel, wherein it is clearly stated that the letter dated 26.2.1996 was delivered to the addressee on 27.2.1996, meaning thereby that the office of the Chief Minister, in fact, received the representation on 26.2.1996. Even though the point raised in the petition, on behalf of the respondent, the same is not controverted by filing the affidavit, nor any material is placed to come to the conclusion that the representation was in fact, considered. In view of this, there is no option but to hold that the representation made on behalf of the detenu by her mother addressed to the Chief Minister is not considered and, therefore, the right guaranteed under Article 22(5) of the Constitution

of India is violated. Under the circumstances, the continued detention is vitiated.

In the result, this petition is allowed. The impugned order of detention dated 14.2.1996 is quashed and set aside. The detenu- Smt. Ushaben daughter of Sardarilal Karamchand Sharma is directed to be set at liberty forthwith, if her detention is not required for any other purpose. The rule is made absolute accordingly with no order as to costs.
